

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

PROTECTIVE ORDER FOR 3500
MATERIAL

- v. -

S2 16 Cr. 776 (VEC)

JOSEPH PERCOCO,
a/k/a "Herb,"
PETER GALBRAITH KELLY, JR.,
a/k/a "Braith,"
STEVEN AIELLO,
JOSEPH GERARDI,

Defendants.

- - - - - x

VALERIE E. CAPRONI, District Judge:

WHEREAS, the Government intends to produce materials, referred to hereinafter as the "3500 Material," to JOSEPH PERCOCO, a/k/a "Herb," PETER GALBRAITH KELLY, JR., a/k/a "Braith," STEVEN AIELLO, and JOSEPH GERARDI, the defendants, in compliance with the Government's obligations under the Federal Rules of Criminal Procedure and Title 18, United States Code, Section 3500, as well as *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny;

WHEREAS, the Government desires to protect the information contained in the 3500 Material because such material contains personal identifying information and other sensitive information that witnesses and others have provided to the Government, some

of which also relates to ongoing investigations and matters scheduled for trial at a later date;

WHEREAS, this Order is intended to supplement the Protective Order entered on or about December 21, 2016 in this matter (Docket No. 74);

WHEREAS, JOSEPH PERCOCO, a/k/a "Herb," the defendant, by his attorney, Barry Bohrer, Esq., PETER GALBRAITH KELLY, JR., a/k/a "Braith," the defendant, by his attorney Daniel Gitner, Esq., consent to the entry of this Order;

IT IS HEREBY ORDERED THAT:

1. Copies of the 3500 Material produced by the Government in the instant action in relation to the trial that is scheduled to begin on January 8, 2018 (hereinafter, the "January Trial") shall bear stamps with numbers beginning with the numbers 35 __ __ or shall be produced within an electronic folder identified as 3500 Material as defined above.

2. The 3500 Material disclosed to the defendants or to their counsel in relation to the January Trial:

(a) Shall be kept in the possession of the defendants or their counsel, and shall not be distributed or disclosed to others except as set forth in paragraph 2(b) below; and

(b) May be disclosed by the defendants' counsel only to persons with whom defense counsel is working, formally or

informally, on the defense of the January Trial, including the following persons (hereinafter, "Designated Persons"):

i. anyone providing legal, investigative, secretarial, technological, clerical, paralegal, or other support services in connection with the January Trial and who is employed by, engaged by, advising or otherwise working at the direction of the defendants' attorneys, as well as any students or interns working for the defendants' attorneys;

ii. expert witnesses, investigators or advisors retained by any defendant or on his or her behalf in connection with the January Trial;

iii. fact witnesses and any other third parties (and/or their counsel) interviewed, consulted, or questioned by the defendants' counsel or by anyone in sub-paragraphs 2(b)(i) or 2(b)(ii) in the course of defending the January Trial; and

iv. such other persons as hereafter may be authorized by the Court upon such application by a defendant or the Government. In the event that any defendant wishes to expand the list of "Designated Persons," that defendant shall be entitled to apply for such relief through an ex parte letter to the Court, without notice to the Government. The Government consents that it will not challenge the ex parte nature of such an application. The consenting defendants have consented to this Protective Order on the express understanding that such relief

is available. This Protective Order is not intended to prevent the defense team from using the 3500 Material in the interest of defending this criminal case in the January Trial.

3. No party shall disclose the 3500 Material to members of the media, nor shall any party post any of the 3500 Material on any Internet or network site to which persons other than the parties in this criminal action or Designated Persons have access. The defendants and their respective counsel may not use, disclose, or disseminate the 3500 Material, or any information taken from the 3500 Material, for any purpose other than in connection with the defense of this criminal action in the January Trial.

4. The defendants and their counsel shall provide a copy of this Order to Designated Persons to whom the 3500 Material is disclosed pursuant to paragraph 2(b). Designated Persons shall be subject to the terms of this Order.

5. The provisions of this Order shall not be construed as preventing the disclosure of any information in relation to the proceedings of the January Trial, including in any motion, hearing, or sentencing proceeding held in relation to the January Trial, to the extent personal identifying information

and other law-enforcement-sensitive information is redacted, in consultation with the Government.

Dated: New York, New York
November __, 2017

SO ORDERED:

HONORABLE VALERIE E. CAPRONI
UNITED STATES DISTRICT JUDGE